

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case 2:08-cr-20585-GER-DAS

v.

D-1 PETER HENDRICKSON,

VIO: 26 U.S.C. § 7206(1)

Defendant.

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**GOVERNMENT’S RESPONSE TO DEFENDANT’S POST SENTENCING MOTION**

The United States Attorney for the Eastern District of Michigan, by and through the undersigned attorneys, respectfully submits this memorandum in opposition to Defendant’s post sentencing motion. With the exception of the argument regarding restitution, the defendant repeats and rehashes numerous arguments that the Court previously rejected. As such, it should be deemed a motion for reconsideration governed by Local Rule 7.1(h). Under that rule, the government is not required to respond and will not do so, unless ordered by the Court.

The sole issue of relevance is the defendant’s claim that for purposes of restitution he should be given credit for exemptions and deductions that he did not take on the false returns that he filed with the IRS. Def. Memo., p. 7. Such is not the case. As a matter of context, for the years 2002 through 2006 the government calculated restitution based on the returns filed by the defendant.<sup>1</sup> That is, if a married defendant with children files a return under the status “married filing separately” and elects not to take exemptions or deductions, the government treats that as a

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<sup>1</sup> For the year 2000, the government used the amount of tax lawfully assessed by the IRS.

strategic choice by the defendant and does not overrule it. Such a calculation is the most concrete, reliable and fair as it neither makes presumptions nor draws inferences.

The Court should turn a deaf ear to the defendant's retrospective claim for such exemptions and deductions. Taxpayers have no "right" to deductions and exemptions. Rather, they are the product of legislative grace. Weingarden v. C.I.R., 825 F.2d 1027, 1029 (6<sup>th</sup> Cir. 1987) ("[P]rovisions granting a deduction or exemption are matters of legislative 'grace' and are construed strictly (in favor of the government)."). As evidenced by past practice and his memorandum, the defendant's failure to take the deductions and exemptions was not the product of either ignorance or mistake. Rather, he made a deliberate election to forgo them. Now that the defendant has been convicted and compelled to repay the government the taxes he owed, he should not be permitted to reduce his liabilities by conjuring a return that he did not file. See United States v. Yip, 592 F.3d 1035 (9<sup>th</sup> Cir. 2010). For that reason, the Court should adopt the government's restitution figures.

Respectfully submitted,

BARBARA MCQUADE  
UNITED STATES ATTORNEY

Date: May 16, 2010

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**CERTIFICATE OF SERVICE**

This is to certify that on May 16, 2010, an original copy of the Government's Response to Defendant's Post Sentencing Motion was filed with the U.S. District Court for the Eastern District of Michigan and served on counsel for the defendant by filing the same with the Electronic Case Filing system.

\_\_\_\_\_/s/  
Mark F. Daly  
Trial Attorney